Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

79-954

EDWARD J. SHANAHAN,
Petitioner

v.

STATE OF MAINE,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

PETITIONER'S REPLY BRIEF

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The Respondent argues that the Petition should be dismissed on the ground that the Petition was filed out of time. Specifically, that Maine practice does not permit a MOTION FOR RECONSIDERATION; and that the Motion filed by Petitioner was a nullity.

This Court's attention is called to the Provisions of M.R.C.P. 75B(a) relating to Motions before the Law Court as follows:

> "(a) Procedure on Motions. Unless another form is prescribed by these rules, an application to the Law Court for an order or other relief shall be by motion, which shall be in writing, shall state with particularity the grounds therefor and shall set forth the order or relief sought."

The Rule has been construed repeatedly to include both pre and post judgment matters. In RAND vs. B.G. PRIDE REALTY, 360 Atlantic 2nd 519 at 521, the Court said:

> "the general rule espoused in Mather v. Cunningham, supra, stands modified by Rule 75B to the extent of permitting the Law Court to protect the integrity of its own processes and allowing it to implement the generally recognized exceptions to the general rule. Indeed, an appellate court does not lose jurisdiction of the case and may recall its

mandate for the purpose of correction where there has been some irregularity or error in its issuance, as where it was issued contrary to the rules of the court, or where, by reason of clerical mistake, it does not correctly express the judgment of the court . . . as where the judgment transmitted by the appellate court, because of inadvertent error, mistake, fraud, or lack of jurisdiction, was not in fact the judgment of the court . . ."

and

" We may retain jurisdiction under Rule 75B without the benefit of specific statutory authorization because of our inherent power to specify the particular time at which we divest ourselves of jurisdiction."

A classic example of the Supreme Judicial Court of Maine accepting and acting upon a MOTION FOR RECONSIDERATION is found in MAINE CENTRAL RAILROAD COMPANY vs. HALPERIN, 381 Atlantic 2nd, 8 at page 9:

"WERNICK, Justice.
On motion for reconsideration.
Plaintiff Maine Central has moved for

reconsideration of the Court's November 16, 1977 opinion in this case. 379 A. 2d 980. Maine Central's motion asks us to address the issue
'whether the imposition of the Maine Railroad Excise Tax under the specific circumstances affecting Maine Central's net railway operating income in 1974 contravened the Commerce (Clause) . . '

Maine Central suggests that this question became obscured, inadvertently, in the attention concentrated on the broader argument that it is facially unconstitutional to include incentive per diem income in the 'net railway operating income' used to compute the excise on railroads. Although we are satisfied that in its fundamental import our original opinion sufficiently covered the 'as applied' issue now being raised, in the interest of full clarity we deem it appropriate to add a clarifying supplement."

The original Opinion to which the MOTION FOR RECONSIDERATION was directed is set forth in MAINE CENTRAL RAILROAD COMPANY vs. HALPERIN, 379 Atlantic 2nd 980. Petitioner was requesting a clarification and specific con-

sideration and discussion of several issues, all as set forth in the Motion.

CONCLUSION

The MOTION FOR RECONSIDERATION filed by Petitioner was proper. The Motion was denied by the Court. Petitioner filed the Petition for Certiorari within the prescribed 90 days period. The Petition should be granted.

Respectfully submitted,

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